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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Donna R. Searcy
Secretary
Federal Communications Commission
Washington, D.C. 20554

ATTN: The Honorable Joseph Stirmer

RE: Calvary Educational Broadcasting Network, Inc., MM Docket
No. 92-122, Poplar Bluff, Missouri

Dear Ms. Searcy:

Transmitted herewith on behalf of Calvary Educational Broadcasting Network, Inc. is an original and six copies of its "Findings of Fact and Conclusions of Law" submitted in connection with the above-referenced docketed proceeding.

Should any questions arise concerning this matter, kindly contact the undersigned directly.

Respectfully submitted,

MAY & DUNNE, CHARTERED

By:

Joseph E. Dunne III
Joseph E. Dunne III
Attorney for Calvary Educational
Broadcasting Network, Inc.

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enclosures

xc: All Per Attached Certificate of Service
Nina Stewart

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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

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In Re Application of)	MM Docket No. 92-122
)	
CALVARY EDUCATIONAL BROADCASTING)	File No. BRH-891103UA
NETWORK, INC.)	
)	
For Renewal of License of)	
KOKS(FM), Poplar Bluff,)	
Missouri)	

TO: The Honorable Joseph Stirmer
Chief Administrative Law Judge

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

By: Joseph E. Dunne III
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PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. PRELIMINARY STATEMENT

1. This proceeding involves the license renewal application of Calvary Educational Broadcasting Network, Inc. (Calvary), licensee of noncommercial educational radio station KOKS, Poplar Bluff, Missouri, which was filed on November 30, 1989.

2. By Hearing Designation Order, FCC 92-238 (released June 12, 1992) (hereinafter, "HDO"), the license renewal application was designated for hearing on the following issues:

1. To determine whether Calvary Educational Broadcasting Network, Inc. violated Section 73.318 of the Commission's Rules, 47 C.F.R. §73.318 ("FM blanketing interference"), and, if so, the nature and extent of the violation;
2. To determine whether Calvary has misrepresented facts or lacked candor in its statements to the Commission regarding the extent and success of its efforts to correct the blanketing interference problems;
3. To determine whether the licensee's management and operation of the Station KOKS was so negligent, careless or inept, or evidenced such disregard for the Commission's rules,

that it cannot be relied upon to fulfill the responsibilities imposed on it;

4. To determine, in light of the evidence adduced pursuant to the preceding issues, whether or not the grant of the subject license renewal application would serve the public interest, convenience and necessity.

3. The Hearing Designation Order further ordered that if the hearing record did not warrant an Order denying the license renewal application of KOKS(FM), it should also be determined if KOKS(FM) has willfully or repeatedly violated Sections 73.318 (FM Blanketing), 73.1015 (submitting truthful written statements and responses to the Commission), 73.267 (determining operating power), 73.1560 (operating power requirements), 73.1213 (tower lighting and painting), and 73.3527 (public file requirements) of the Commission's Rules. If so, it should be determined if an Order of Forfeiture shall be issued pursuant to Section 503(b) of the Communications Act of 1934, as amended, in the amount of up to \$250,000 for the willful and repeated violation of the stated rules.

4. A prehearing conference was held in this proceeding on July 16, 1992 (Tr. 1-30), an admissions session was held in Washington on November 12, 1992 (Tr. 31-140), and a hearing was held in Poplar Bluff, Missouri from November 17-20, 1992 (Tr. 141-1126). The record in this proceeding was closed by the Presiding Officer's Order, FCC 92M-1071 (released Dec. 8, 1992). There were no intervening parties.

II. FINDINGS OF FACT¹/

5. Calvary is a nonprofit, nonstock corporation that is recognized as tax exempt by the state of Missouri and the IRS (Ex. 1, p. 1). Owning and operating KOKS is Calvary's sole function. Don Stewart is and always has been the president and a director of Calvary. Mrs. Nina Stewart is and always has been the secretary-treasurer of Calvary. Alan Teserau is the vice president and a director of the corporation (Tr. 389-390). Carl Clanahan and Dale Vermillion are also directors of the corporation (Tr. 389). None of the officers or directors of Calvary, except Mr. and Mrs. Stewart, have any daily involvement with the station, and the involvement of the other directors has been confined wholly to attendance at yearly board meetings, a pattern that has continued since the corporation was formed in 1987 (Tr. 390-92). The station has never generated more than \$195,000 in revenues (Tr. 386), nor employed more than two full-time and four part-time paid employees, and volunteers (Ex. 3, p. 1). Mrs. Stewart is paid \$160.00 a week, Mr. Stewart works at the station as an unpaid volunteer.

6. Calvary's original construction permit application was filed in 1987 (Ex. 14, p. 1). Mr. and Mrs. Stewart discussed the location of the antenna site, and decided to place the tower on

¹/References to the transcript will be noted in the text as "Tr. ____." References to exhibits submitted by Calvary will be noted as "Ex. ____, p. ____." References to exhibits submitted by the Mass Media Bureau will be noted as "MMB Ex. ____, p. ____." References to documents submitted as attachments to various exhibits will be cited as "Ex. ____, Att. ____, p. ____." To avoid a number of redundant citations, the source for each sentence is the last cited source.

their own property (Tr. 394). The Stewarts had sufficient land, and there was no zoning which prevented the construction. Cost was also a factor, since they explored the possibility of locating on the nearby channel 15 tower, but the cost was too high (Tr. 338). The Stewarts also discussed tower placement with their consulting engineer, Kevin Fisher, who approved of the location of the tower. Mr. Stewart characterized the area in which the tower was to be located as rural because his next door neighbor has a horse, and a neighbor a few houses away has from 50-60 hogs (Tr. 341-42). In response to question 24 of FCC Form 340, which questions whether the station is going to be in a populated area and, if so, requires a discussion of the steps anticipated to cure any blanketing interference, Calvary answered "Does Not Apply" (Ex. 14, p. 1). Although Mr. Stewart signed the application (Tr. 343), the response was prepared by Mr. Kevin Fisher, Calvary's consulting engineer (Ex. 14, p. 1). The response was a subjective judgment made by Mr. Fisher based on the number of dwellings in the area as plotted on a topographic map. Mr. Fisher did not discuss this response with Mr. Stewart when he was preparing the application (Ex. 14, p. 2; Tr. 344), and, in fact, didn't discuss blanketing interference with Mr. Stewart at all until the station went on the air (Ex. 14, p. 2).

7. In February 1988 the truck bringing the sections of the tower pulled onto the Stewart property and began to unload (Ex. 1, p. 1). Very soon thereafter Mrs. Doris Smith, the next door neighbor, called and asked what was going on. When she was told

that a radio tower was going up, Mr. Stewart testified that Mrs. Smith told him that "[y]ou may put it up but I will take it down." Mrs. Smith agreed that the conversation took place, but stated that she only objected to the erection of the tower because it would "... be an eyesore and devalue our property" (Tr. 902). Mrs. Smith also spoke to Mrs. Hillis about the tower because she felt it would devalue their property, "which I think it did" (Tr. 904). When the station made an announcement in the newspaper that the station was going on the air on April 1, Mrs. Smith called Mr. Stewart at his home to complain that the station was "messing up her TV reception" (Ex. 1, p. 1). KOKS was not to actually begin broadcast operation for some months, and at that time the tower had been erected and lights installed, but nothing electrical was installed or energized at the site. One of Calvary's board members, Carl Clanahan, called Mrs. Stewart soon thereafter to report that he had received a few calls from people who didn't give their name, complaining about interference to their TV reception caused by the station--some five months before the station went on the air (Ex. 3, p. 3).

8. In August 1988, the Stewarts experienced a lightning strike that melted the timer for the lights on the tower as well as the Stewarts' satellite dish (Tr. 1109). Mr. Craig Meador, who had worked on the satellite dish twice before, in 1985 and 1987, was asked to come out to the house and repair the satellite dish. Mr. and Mrs. Stewart are sure of the time when Mr. Meador came because only lights had then been installed on the tower and the power for the lights was running from an extension from their house (Tr.

1069, 1108). He came to the house, worked on the dish as well as a box in the Stewart home, removed the box for repair, and returned with the box about a week later (Tr. 1110). The satellite dish is 72 feet from the transmitter building (Tr. 1118). Mr. Stewart testified that was the last time Mr. Meador was at the Stewart house, and that he was never in KOKS' transmitter building with Mr. Meador (Tr. 1112-14). Mr. Meador testified that he repaired the Stewart satellite dish during February or March of 1989, and is fairly sure of the date because the station was already on the air and the air was cold (Tr. 1020-21). While he was working on the satellite dish Mr. Meador testified that he had a conversation with Mr. Stewart who was working in the KOKS transmitter building which he estimated was about 30 yards from the satellite dish (Tr. 1024). Meador stated that Mr. Stewart invited him into the transmitter building and upon entering he noticed that the transmitter was running at peak (Tr. 1025). Mr. Meador testified that the transmitter was running at 115-125 percent over normal power, but wasn't sure of the exact reading, only that it was over normal. When Meador commented on this to Mr. Stewart, he allegedly lowered the power to legal limits and then raised it again above normal (Tr. 1027). Mr. Meador testified that Mr. Stewart commented that "he was trying to reach Memphis." Mr. Stewart testified that Mr. Meador's testimony was false (Tr. 1109), but knows of no reason why Mr. Meador would bear him any animosity or tell him a lie (Tr. 1120). Mr. Meador testified, however, that it wasn't smart to run a transmitter over power because it would damage the

transmitter's tubes, which are quite expensive to replace (Tr. 1029). Mr. Ramage testified that it was not reasonable to raise and lower power at the transmitter both because of the difference in coverage and because raising and lowering transmitter power has an effect on transmitter performance and lessens the life of expensive transmitter tubes (Tr. 861; cf. MMB Ex. 1, p. 5).

9. KOKS went on the air on October 6, 1988 at about 4:00 p.m. (Ex. 3, p. 3). When the station went on the air neither of the Stewarts had any broadcast experience whatsoever (Tr. 334), both had been farmers, and worked in an egg laying operation (Tr. 334, 393). Mrs. Stewart kept the records for an egg laying operation (Tr. 393). Neither Stewart had ever discussed FM blanketing interference with their consulting engineer before KOKS went on the air (Tr. 406 [Mrs. Stewart], 762 [Mr. Stewart]). Because of the Stewarts' lack of experience they hired an experienced general manager for the station, Jim Baggett (Ex. 2, p. 3; Tr. 388-389), and a part-time chief engineer who Mr. Baggett brought with him, Earl Abernathy (Ex. 2, p. 4). Mrs. Stewart was working at the station as the station's secretary full-time (Tr. 388), limited mostly to answering the phones and keeping the books (Ex. 3, p. 4). Mr. Stewart came by the station almost every day, but for the first few months after the station went on the air he was primarily involved in working on a farm owned by his son (Tr. 769). His station involvement was mainly limited to technical matters (Ex. 3, p. 4).

10. When the station went on the air the station began to get calls complaining that the station was causing interference to TV reception, but the people did not give their names (Ex. 3, p. 3). The complaints almost always were about channel 6. Mrs. Smith called a number of times to complain about interference to her television reception. Others who called who Mrs. Stewart remembered were Marie Christian, Dairrel Denton and Randy Soens (Ex. 3, p. 4). Mr. and Mrs. Stewart relied on Mr. Baggett to take care of these complaints (Ex. 2, p. 3). Neither Stewart was experienced in running a radio station, and were relying on someone with some experience. The Stewarts subsequently discovered, because they didn't know it at the time, that Mr. Abernathy visited a couple of the complainants' homes, Dairrel Denton and Randy Soens (Ex. 3, p. 4). The Stewarts didn't know what he did at these homes. Mr. Baggett resigned soon after the station went on the air during the later part of November 1988 (Ex. 2, p. 3), and Mr. Abernathy simply didn't show up for work when he was expected about 30 days thereafter (Tr. 728). Mr. Baggett had done nothing during his stint as general manager to deal with the complaints (Ex. 2, p. 3). Mr. Stewart discovered the first letter from the FCC dated October 21, 1988, when he and Mrs. Stewart were going through Mr. Baggett's file at the station after Mr. Baggett had left (Tr. 724).

11. When the complaints about interference came into the station they most often would come in at night (Ex. 3, p. 4) but fewer than 50 left their name (Ex. 3, pp. 4-5). Mrs. Smith called often, as did Mrs. Christian. The caller's name, telephone number

and a description of the complaint were written down, and Mrs. Stewart returned the call within a few days. At that time Mrs. Smith and Mrs. Hillis had composed and had distributed a petition in the immediate neighborhood complaining of KOKS interference which was signed by from 30 to 35 people which was sent to the FCC (Tr. 716). When no seeming action was taken in response to that petition, Mrs. Hillis composed another petition, which Mrs. Smith approved, and which Mrs. Smith and Mrs. Hillis distributed at local food stores and other public places (Tr. 922). Mrs. Smith and Mrs. Hillis eventually went door to door to most of the homes in Butler county, either leaving petitions or taping them to doors (Tr. 922-923). These petitions were sent to Mrs. Smith who forwarded copies to the FCC (Tr. 925). The FCC then sent the complaints to the station, where they were seen by Calvary for the first time (Ex. 3, p. 5). Eventually over 1200 petitions were received by the FCC and forwarded to Calvary, representing 888 families (Tr. 926).

12. Calvary received the first of these petition complaints in a batch of 250 in November of 1988. Neither Stewart knew anything about blanketing interference, and their engineer, Earl Abernathy, was not helpful (Ex. 3, p. 5). Mr. Stewart spoke to Calvary's consulting engineer, Kevin Fisher, for about three hours concerning the blanketing complaints and how they might be cured (Tr. 419). Mr. Fisher suggested that Calvary try the installation of "string" filters--antenna lead wire cut to a specific length to correspond to the frequency of the signal which was to be suppressed (Tr. 432), which were fabricated by Mr. Abernathy

(Ex. 2, p. 3; Tr. 455). Calvary relied on the information sent to the station by Mrs. Raines concerning blanketing interference and the station's obligations to cure blanketing interference (Ex. 3, p. 5-6). Mrs. Stewart understood the station's obligations to include curing any problems with blanketing interference within the blanketing area at no expense to the person and providing technical advice to those experiencing blanketing interference outside the blanketing contour. A table in Mrs. Raines' information indicated that for KOKS the blanketing contour was about 2.45 miles from the antenna site. Mrs. Stewart also understood from the information provided by the FCC that the station was not responsible for curing any problems experienced by people with boosters and preamplifiers, which were (and are) popular in the area, but that Calvary was responsible for curing interference to radios. KOKS was also not responsible for curing interference to non-RF devices such as VCR's, telephones, etc. The information KOKS received from the FCC also noted that the station was not responsible for curing problems to audio or video tape players or phonographs, and problems caused by "malfunctioning or mistuned receivers" or "improperly installed antenna systems" (Ex. 3, Att. A, p. 3).

13. Mr. and Mrs. Stewart were also told that there was one other significant limitation on the station's obligation to cure interference to local television signals, and that was that the station was not required to cure interference to channel 6, WPSD-TV, Paducah, Kentucky because the station is located so far away that the station's grade B contour is not close to Poplar Bluff

(Ex. 3, p. 6). Mrs. Stewart was told this by Calvary's consulting engineer, Kevin Fisher, and by the station's communications counsel, Joseph Dunne (Tr. 433, 580). Mrs. Stewart in several telephone conversations with Mrs. Raines mentioned that certain complaints received only dealt with the reception of channel 6 which the station did not have any responsibility for curing, and Mrs. Raines did not contradict her. Several of Calvary's written submissions to the FCC made the same point, such as MMB Ex. 15, p. 2; MMB Ex. 17, p. 1; MMB Ex. 18, p. 4; MMB Ex. 21, p. 4; and, Ex. 10, p. 2; and Mrs. Raines did not contradict Mrs. Stewart (Ex. 3, p. 7). Mrs. Stewart mentioned to Mr. Poole during his May 1989 inspection of KOKS that the station wasn't responsible for curing interference to channel 6, and he did not contradict her (Tr. 596). In the Commission's October 30, 1990 letter to Calvary the Commission stated that "[w]e have carefully examined and analyzed all materials submitted by the parties in response to our April 27 letter . . .," presumably including Calvary's comments about Poplar Bluff being beyond the grade B contour of WPSD-TV (MMB Ex. 21, p. 4, 85) and of Calvary responding to complaints of interference only to channel 6 by telling numerous people of a filter to purchase (MMB Ex. 21, p. 4, 5, 6), yet the Commission did not comment on this fact or offer any criticism or direction concerning how to treat channel 6, even though the Commission was to determine that "baby monitor" audio transmission devices and electrical musical instruments do not fall within the scope of section 73.318, but that satellites do (MMB Ex. 25, p. 2). Finally, Mrs. Stewart

believed that KOKS had no obligation to cure interference to channel 6 based on a letter which she reviewed from the management of WPSD-TV which stated that the station had "no legal means to change the situation, due to specified geographical limits" (Ex. 3, p. 7; Ex. 3, Att. B).

14. Mrs. Raines believed that KOKS had no obligation to cure interference to channel 6, because she told that to Mrs. Smith (Tr. 937) and Mrs. Hillis (1007). Mr. Clark Poole, an FCC inspector who conducted an investigation of the blanketing interference and inspected the station in May of 1989 didn't believe Calvary had to cure interference to channel 6 because channel 6 didn't put a grade B signal over Poplar Bluff (Ex. 5, p. 3), and told Charles Lampe, Calvary's contract engineer, during the station inspection that the station "didn't need to worry" about channel 6 (Ex. 1, p. 8), and both Mrs. Smith (Tr. 929-30, 937) and Mrs. Hillis (Tr. 1010). Mrs. Smith and Mrs. Hillis made reference to the fact that "channel 6 is not an authorized station for this area ..." in one of the broadsides that they distributed (Ex. 11) based on Mr. Poole's comments as well as Mrs. Raines' (Tr. 937). Once the investigation of the blanketing complaints was transferred from the Kansas City Field Office to Washington, both Mrs. Smith and Mrs. Hillis made repeated calls to various officials in the FCC's Washington offices concerning the complaints about KOKS' interference, and no FCC official ever told either of them that KOKS was responsible for curing interference to WPSD (Tr. 944, 1009). Mr. Ramage testified that he was not aware of any instance

in which the FCC required a station to resolve complaints of blanketing interference to the reception of a station beyond the station's grade B contour (Tr. 856). WPSD-TV also did not believe that it had the legal right to complain of KOKS interference to its signal in Poplar Bluff (Ex. 3, Att. B).

15. Mrs. Stewart began making calls to complainants in November of 1988 and to make appointments to visit the home to correct the problem, asking people to describe the problem (Ex. 3, p. 7). Mrs. Stewart and one volunteer made all the calls to complainants because the station was short of staff (Ex. 3, p. 9). In almost every instance the person complained about interference to channel 6. Mrs. Stewart estimated that approximately 60 percent of the calls she received complaining of interference referred solely to interference to channel 6 alone (Tr. 573). Mrs. Stewart also asked if the person had a booster or a preamplifier, and if the person was experiencing interference to other channels. If the person complained only of channel 6 interference, or had a booster or preamplifier, Mrs. Stewart advised the person of an FM notch filter, an O-75, that often reduced interference whatever the cause (Ex. 3, p. 9), because she did not believe that the station was responsible for curing interference to channel 6, or to someone with a booster (Ex. 3, p. 7). Mrs. Stewart did not ask about the number of TV sets in a home or if the complainant had a TV which was not hooked up to a booster, nor did she ask about radio reception (Tr. 431).

16. According to Mrs. Stewart, almost no one in a telephone call or in a subsequent home visit mentioned interference to anything other than a TV, including a radio (Ex. 3, p. 7). Mrs. Stewart noted that the Hillis' mentioned interference to their tape player and radio during a home visit in 1989, although nothing was done to correct either²/. Mrs. Stewart recalled that Mrs. Mary Wynn complained about interference to her radio, and a choke filter was installed on her radio which Mrs. Stewart thought cured the problem (Ex. 3, p. 8). Mrs. Wynn testified that the installation of a choke filter did nothing to restore radio reception or cure the interference, and that the filter Mrs. Stewart installed did not improve reception (Tr. 651). Mrs. Betty Anderson was also a person who complained to Mrs. Stewart about her radio reception during a home visit, and a filter was installed on both her television and radio set (Ex. 3, p. 8). Mrs. Joanne Gray also complained about problems with her radio when Mrs. Stewart visited her house (Ex. 3, p. 8). Mrs. Gray testified that KOKS interference came in across the FM radio dial, and that nothing could be heard on the AM band but a load buzz (Tr. 980). Mrs. Gray turned on the radio when Mrs. Stewart was there so she could hear the buzz (Tr. 980), and Mrs. Stewart told her that there was nothing that she could do about that (Tr. 983; Ex. 3, p. 8). Mrs. Gray, upon reflection, does not remember if she specifically

²/The station is not required by FCC Rule to cure interference to an audio tape player. See Section 73.318(b) of the Commission's Rules, see also, Ex. 3, Att. A, p. 3).

mentioned the problem with the FM band during her conversation with Mrs. Stewart, but does remember turning on the radio to the AM band and hearing the buzzing noise (Tr. 983). Mr. Lampe testified that he visited over 105 homes as a representative of KOKS, and no one asked him about their radio reception (Tr. 321).

17. Mrs. Stewart knew that the blanketing contour was about 2.5 miles from the station and determined whether a complainant was within the blanketing contour using that person's estimate of the distance of their home from the antenna site or guessing the distance to their home from the directions they gave over the telephone (Ex. 3. p. 8). Since the area is largely rural there were no handy street references, and Mrs. Stewart's guesses were sometimes wrong concerning who was within and without the blanketing contour. The Ellis', for example, lived within the blanketing contour but Mrs. Stewart believed they lived outside the contour from their directions. From his directions, Mrs. Stewart believed that Edward Hodgins lived beyond the blanketing contour (Tr. 1080). A map of the blanketing contour wasn't prepared until the FCC ordered it (MMB Ex. 20, p. 2) and was submitted to the FCC in September 1989 (Ex. 3, p. 9).

18. With only a few exceptions, Mrs. Stewart did all the work of responding to the complaints alone (Tr. 568). Mrs. Stewart went to the homes of those within the blanketing contour to install string filters (Ex. 3, p. 10). These filters, according to Mrs. Stewart, generally worked to improve reception of channel 8, but did nothing with channel 6. After visiting a few homes Mrs.

Stewart discovered that the 0-75 filter was more successful, in many instances, of curing interference to channels 6 and 8. Mrs. Stewart never installed other equipment, such as antenna lead wire or coaxial cable on the television sets, nor did she, with one exception, involve KOKS' contract engineer Charles Lampe in resolving these complaints. Mrs. Stewart installed filters on portable TV sets (Tr. 1072), such as the filter she installed on a resident's TV at Whispering Oaks Boarding Home. Mrs. Stewart had a number of complaints to resolve and did not believe that the station's resources were such that it could hire Mr. Lampe to do the job. Mrs. Stewart estimated that she visited between 135-150 homes, some more than once, attempting to resolve complaints concerning KOKS interference (Tr. 597). Many persons required more than one call before they were reached (Tr. 570) and Mrs. Stewart estimated that she spent an average of 30 hours per week between November 1988 and June 1989 calling people and visiting homes in response to blanketing interference complaints.

19. Responding to the complaints was made difficult not only because of their number, but also because they were hand-written and difficult to read (Ex. 3, p. 11). Sometimes different people with the same names, such as Clara, Clyde and Mary Freeman called the station or submitted complaints, adding to the confusion (Tr. 541). At times one member of the household would make the complaint and Mrs. Stewart would speak to another member of the house (Ex. 10, p. 1). At times complaints would overlap, in that a second complaint would be submitted to the FCC and Mrs. Stewart

would be uncertain if the person submitted the complaint before or after her visit to the home (Tr. 614). When she went to a person's home, even if it was in response to a written complaint to the FCC, she did not bring the complaint along (Tr. 571). Mrs. Stewart testified that she had reason to believe that the written petitions did not reflect the actual complaint (Tr. 571). In some instances, Calvary was told that the petitions which the FCC received had been altered (MMB Ex. 19, p. 3). In several instances Mrs. Stewart testified that when she visited the home the complainants would only complain of interference to channel 6, even though other channels were marked (Tr. 572). One putative complainant, Mrs. Barbara Lewis, had no complaint, but simply signed the petition because "the ladies had a cause and I was just helping them out." Another complainant, a Mr. Greene, supposedly submitted a petition which identified channels 12 and 15 as having interference, but he denied he had circled channels 12 and 15, and noted that he had a satellite (Tr. 572).

20. Calvary responded to the complaints by making a number of filings at the FCC, dated December 6, 1988 (MMB Ex. 15); December 29, 1988 (Ex. 10); January 24, 1989 (MMB Ex. 17); February 10, 1989 (MMB 19); September 22, 1989 (MMB Ex. 21); October 13, 1989 (MMB Ex. 22); and, February 25, 1991 (MMB Ex. 27). Mrs. Stewart was solely responsible for transmitting the information contained in the report or filing to counsel, who filed the information transmitted with the FCC (Ex. 3, p. 29; Tr. 449). In its first response to the FCC Calvary noted that certain complainants were

exempt because they had a booster, including: Marie S. Christian; Thomas E. Crutchfield; and, Dairel L. Denton (MMB Ex. 15, p. 1), and that certain complaints concerned only reception to channel 6, which Calvary noted was outside the station's grade B contour (MMB Ex. 15, p.2). In its January 24, 1989 response Calvary noted that the complaints of Leatha Piper and Mary J. Wynn were resolved (MMB Ex. 17, p. 2). In its response dated February 10, 1989, Calvary reported that the complaint of Clara Freeman was resolved by the installation of a filter (Ex. 18, p. 2). In its response dated February 24, 1989, Calvary reported the complaints of the following individuals to have been resolved by the installation of a filter: Clyde/Clara Freeman; Mrs. William T. Gray; Sandra Durbin; and Elaine "Libes" (Ex. 19, p. 2). Mrs. Stewart testified that Mrs. "Libes" was Mrs. Elaine Libla (Ex. 3, p. 22; Tr. 539). Submitted with the February 24, 1989 response were Mrs. Stewart's notes of her contacts with the complainants, including those for the Freemans (Ex. 19, p. 68); Mrs. William T. Gray (Ex. 19, p. 66); Sandra Durbin (Ex. 19, p. 62); and Elaine Libla (Ex. 19, p. 59). On Mrs. Libla's complaint Mrs. Stewart noted that after the installation of a filter Mrs. Libla could "even get channel 6, but without color." When Mrs. Stewart reported a complaint "resolved" she testified that she genuinely believed that the complaint was resolved, even though the complainant may have been dissatisfied with the reception of channel 6, because she did not believe that Calvary was responsible for restoring reception of channel 6 (Tr. 614).

21. In its response of September 22, 1989, Calvary reported that Mary and Clyde Freeman complained of interference and had a filter installed, but that they removed the filter before the KOKS representative left (Ex. 21, p.11). Mrs. Gray was reported to have complained of blanketing interference on channels 6 and 8, and that a filter was installed that cured the interference on channel 8 (Ex. 21, p. 12). Mrs. Sandra Durbin was reported to have blanketing interference on channels 8 and 12, which was improved by the installation of a filter (Ex. 21, p. 9). The report noted that with respect to "Elaine Liber," which Mrs. Stewart testified was actually Elaine Libla (Tr. 540), Calvary installed a filter which improved reception on channel 6, but did not bring in color on the channel (Ex. 21, p. 14). Reception on a second TV on channel 6 was noted as not improved even with the installation of a filter. Calvary reported that Mrs. Piper's complaints concerned interference to channels 8, 12 and 15, and in two home visits 2 different filters were installed (Ex. 21, p. 16). Mrs. Piper was noted as having installed a booster. Calvary reported on three different visits to the home of Mrs. Mary Wynn, noting that the installation of a filter on her set in January improved reception on all channels (Ex. 21, p.19), except channel 6, and that Mrs. Wynn was dissatisfied with the result (Ex. 21, p. 19). Calvary reported on another visit to Mrs. Wynn's home in April during which a trap filter was installed that improved reception on every channel except channel 6, and which noted that Mrs. Wynn remained unsatisfied.

22. In addition, in January 1989 the Smiths, Randy Soens, and Thomas Crutchfield filed suit against Calvary in local court, in which the Hillis' later joined, claiming that KOKS was depriving the complainants of their broadcast rights and seeking unspecified monetary damages (Ex. 10, p. 11). The case was dismissed and later appealed to the Missouri Court where it was not finally dismissed until the latter part of 1989 (Tr. 599-602). Calvary's local counsel advised against speaking with any of the plaintiffs in the suit, if possible, while it was pending (Ex. 10, p. 10). The Stewarts tried to comply with this advice consistent to responding to the FCC (Tr. 602).

23. Blanketing complaints were not the only problem facing the station. KOKS had a number of technical problems with its antenna, beginning with a fire in the antenna just two weeks after the station went on the air (Ex. 3, p. 11), which required it to operate at one-third to one-half power until mid-December (Ex. 8, p. 1). The damaged antenna had to be sent to the factory for repairs (Ex. 3, p. 12). On December 23, 1988 someone shot the station's coaxial cable, requiring the station to reduce power (Ex. 9, p. 1). The repaired antenna was mounted on the tower, but the antenna continued to have spectacular arcs, and in May 1989 there was another fire in the antenna (Ex. 3, p. 12). A lightning strike on May 30, 1989 shorted out the antenna and the station could only operate with 55 percent of authorized power. The antenna was taken down and KOKS functioned with a stand-by antenna at one-quarter of the station's authorized power from June until

September 1989. The stand-by antenna was replaced by an entirely new antenna, but this antenna continued to have arcs, especially during rainy weather and heavy fog. The new antenna caught fire in the Spring of 1990, and a repaired antenna was installed. Arcing again became a common problem, so common, in fact, that the station reduced its power, within legal limits, in wet weather (Ex. 3, p. 13). Finally, the antenna manufacturer replaced the antenna with an entirely new 7 bay antenna. Since the antenna has exactly the same directionality as the 4 bay antenna that it replaced, the antenna manufacturer, Shively, informed Calvary that the proof of performance for the 7 bay antenna was the same as for the four bay.

24. In May of 1989 KOKS was inspected by Mr. Clark Poole, who spent some time at the station. Mr. Poole cited the station for failing to keep issues/programs lists in the public file and for violations concerning the EBS rules. Mr. Poole also asked about the list of donors which should be in the public file, and carefully explained to Mrs. Stewart what a programs/problems list was and what the list of donors to be inserted in the public file required (Ex. 3, p. 13).

25. Mr. Poole prepared a report concerning his visit which was sent to the FCC Enforcement Division (Ex. 5). The chief complainants noted in the report were the Smiths and Hillis. Mr. Poole's report showed channels 6, 8, 12 and 15 were either completely out (Channels 6 and 8) or unwatchable due to heavy snow (channels 12 and 15), and that all channels had weak KOKS audio (Ex. 5, p. 2). The Hillis home was also visited. On the Hillis

set channels 6 and 8 were unviewable, but channel 12 was excellent, even though Mr. Hillis indicated that it was not always so good. It remained excellent throughout the evening and after KOKS went off the air. Channel 15 was effected by ghosting, which was corrected by rotating the antenna. With KOKS off the air channel 6 came in "fairly well" at the Hillis home, but channel 8 remained bad even after rotating the antenna for best reception (Ex. 5, p. 3). Mr. Poole made measurements of the signals of channels 6, 8 and 12 in areas around town, and none of the station's signals made the grade B signal levels defined in Commission rules. Mr. Poole noted that the Smiths and Hillis were advised "that the Commission could not require correction of blanketing problems for signals which did not make the class B contour. Only local stations are protected." (Ex. 5, p. 3). Mr. Poole also observed the reception of channels 6, 8, and 12 at the local Super 8 Motel. No picture or sound was observed "due to a weak signal" on channel 6; channel 8 had a TASO 3 picture "due to noise, good sound with no KOKS interference;" and a "TASO 4 due to noise and venetian blind pattern apparently due to co-channel interference from another TV station, good sound with no KOKS interference." Mr. Poole's report noted that litigation had been initiated in local court, and that Mr. Stewart had advised him not to do anything further until the court case was resolved (Ex. 5, p. 4). Mr. Poole identified the main problem as the complainants living close to people who have received "substandard television signals with good results for many years (Ex. 5, p. 4)."